IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

CARLOS LEVY,	)	
	)	
Petitioner,	)	
	)	**No. 1:10-cv-00005**
v.	)	
	)	**Chief Judge Sharp**
DAVID R. OSBORNE, Warden,	)	
	)	
Respondent.	)	

ORDER

For the reasons set forth in the accompanying Memorandum, the Court hereby ADOPTS and APPROVES the Magistrate Judge's Report and Recommendation (Docket No. 116), to the extent that it concludes that Petitioner is not entitled to equitable tolling and recommends dismissal of this action as untimely.

Accordingly, Petitioner's objections (Docket No. 119) are OVERRULED, and this action is **DISMISSED** as untimely pursuant to 28 U.S.C. § 2244(d).

The Court must issue or deny a certificate of appealability ("COA") when it enters a final order adverse to a § 2254 petitioner. Rule 11, Rules Gov'g § 2254 Cases. A petitioner may not take an appeal unless a district or circuit judge issues a COA. 28 U.S.C. § 2253(c)(1); Fed. R.App. P. 22(b)(1). A COA may issue only when the petitioner "has made a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2). A "substantial showing" is made when the petitioner demonstrates that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Miller–El v. Cockrell*, 537 U.S. 322, 336 (2003) (citations and internal quotation marks omitted). "[A] COA does not require a showing that the appeal will succeed," *Miller–El*, 537 U.S. at 337, but courts should not issue a COA as a matter of course. *Id.* Because reasonable jurists could not debate

that Petitioner's action is untimely and not subject to equitable tolling, the Court **DENIES** a COA. Petitioner may, however, seek a COA directly from the Sixth Circuit. Rule 11(a), Rules Gov'g § 2254 Cases.

It is so **ORDERED**.

Kevin H. Sharp

Kevin H. Sharp, Chief Judge
United States District Court